

AMENDED IN ASSEMBLY JULY 3, 2003
AMENDED IN ASSEMBLY JUNE 18, 2003
AMENDED IN SENATE APRIL 10, 2003
AMENDED IN SENATE MARCH 10, 2003

SENATE BILL

No. 145

Introduced by Senator Alpert
(Coauthor: Assembly Member Cox)

February 6, 2003

An act to amend Sections 56329, 56505, 56505.1, and 56506 of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

SB 145, as amended, Alpert. Special education: due process rights.

Existing law provides for the various rights that extend to a parent or guardian of a special education pupil, including the right to obtain an independent educational assessment. *Existing law requires, as part of the assessment plan given to parents or guardians, the parent or guardian of the pupil to be provided with a written notice that includes certain information, including the right to obtain an independent educational assessment.*

This bill would require that, if a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity ~~apply~~ *applies* to an independent educational assessment of the pupil in the pupil's current ~~or proposed~~ educational placement, *and to observation of an educational placement and setting, if any, proposed by the public education agency,* regardless of whether

the assessment is initiated before or after the filing of a due process hearing proceeding. To the extent school districts would be required to allow schoolsite access to independent assessors, this bill would impose a state-mandated local program.

The bill would require the written notice to also include that, if a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the public education agency have an opportunity to observe the proposed placement and the pupil in the proposed placement. The bill would prohibit the observation or assessment of any other pupil who is not the subject of the observation without the consent of his or her parent or guardian.

Existing law enumerates the requirements for a state hearing, including the requirement that the state hearing be conducted by a person knowledgeable in the laws of special education and administrative hearings, and sets forth the authority of the hearing officer.

This bill would require the person to have satisfactorily completed training pursuant to this act. The bill would require the Superintendent of Public Instruction to establish standards for the training and degree of specialization of hearing officers and for quality control mechanisms to ensure fair hearings and accurate decisions. The bill would authorize the hearing officer to set a reasonable time limit for the hearing.

This bill would make other technical, nonsubstantive changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 56329 of the Education Code is
2 amended to read:
3 56329. As part of the assessment plan given to parents or
4 guardians pursuant to Section 56321, the parent or guardian of the
5 pupil shall be provided with a written notice that shall include all
6 of the following information:



(a) Upon completion of the administration of tests and other assessment materials, an individualized education program team meeting, including the parent or guardian and his or her representatives, shall be scheduled, pursuant to Section 56341, to determine whether the pupil is an individual with exceptional needs as defined in Section 56026, and to discuss the assessment, the educational recommendations, and the reasons for these recommendations. A copy of the assessment report and the documentation of determination of eligibility shall be given to the parent or guardian.

(b) A parent or guardian has the right to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists, as defined by regulations of the board, if the parent or guardian disagrees with an assessment obtained by the public education agency, in accordance with Section 300.502 of Title 34 of the Code of Federal Regulations. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have ~~in-class~~ *in-class* observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current ~~or proposed~~ educational placement and setting, *and observation of an educational placement and setting, if any, proposed by the public education agency*, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

(c) The public education agency may initiate a due process hearing pursuant to Chapter 5 (commencing with Section 56500) to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent or guardian still has the right for an independent educational assessment, but not at public expense.

If the parent or guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free, appropriate public education to the child, and may be presented as evidence at a due process hearing pursuant to Chapter 5 (commencing with Section 56500) regarding the child. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have ~~in-class~~ *in-class* observation of a pupil, an equivalent

1 opportunity shall apply to an independent educational assessment
2 of the pupil in the pupil's current ~~or proposed~~ educational
3 placement and setting, *and observation of an educational*
4 *placement and setting, if any, proposed by the public education*
5 *agency, regardless of whether the independent educational*
6 *assessment is initiated before or after the filing of a due process*
7 *hearing proceeding.*

8 *(d) If a parent or guardian proposes a publicly financed*
9 *placement of the pupil in a nonpublic school, the public education*
10 *agency shall have an opportunity to observe the proposed*
11 *placement and the pupil in the proposed placement, if the pupil has*
12 *already been unilaterally placed in the nonpublic school by the*
13 *parent or guardian. Any observation conducted pursuant to this*
14 *subdivision shall only be of the pupil who is the subject of the*
15 *observation and may not include the observation or assessment of*
16 *any other pupil in the proposed placement. The observation or*
17 *assessment by a public education agency of a pupil other than the*
18 *pupil who is the subject of the observation pursuant to this*
19 *subdivision may be conducted, if at all, only with the consent of the*
20 *parent or guardian pursuant to this article. The results of any*
21 *observation or assessment of any other pupil in violation of this*
22 *subdivision shall be inadmissible in any due process or judicial*
23 *proceeding regarding the free appropriate public education of that*
24 *other pupil.*

25 SEC. 2. Section 56505 of the Education Code is amended to
26 read:

27 56505. (a) The state hearing shall be conducted in
28 accordance with regulations adopted by the board.

29 (b) The hearing shall be held at a time and place reasonably
30 convenient to the parent or guardian and the pupil.

31 (c) The hearing shall be conducted by a person knowledgeable
32 in the laws governing special education and administrative
33 hearings pursuant to Section 56504.5, and who has satisfactorily
34 completed training pursuant to this subdivision. The
35 superintendent shall establish standards for the training of hearing
36 officers, the degree of specialization of the hearing officers, and
37 the quality control mechanisms to be used to ensure that the
38 hearings are fair and the decisions are accurate. The hearing officer
39 shall encourage the parties to a hearing to consider the option of
40 mediation as an alternative to a hearing.

(d) Pursuant to subsection (a) of Section 300.514 of Title 34 of the Code of Federal Regulations, during the pendency of the hearing proceedings, including the actual state level hearing, or judicial proceeding regarding a due process hearing, the pupil shall remain in his or her present placement, except as provided in Section 300.526 of Title 34 of the Code of Federal Regulations, unless the public agency and the parent or guardian agree otherwise. A pupil applying for initial admission to a public school shall, with the consent of his or her parent or guardian, be placed in the public school program until all proceedings have been completed. As provided in subsection (c) of Section 300.514 of Title 34 of the Code of Federal Regulations, if the decision of a hearing officer in a due process hearing or a state review official in an administrative appeal agrees with the pupil's parent or guardian that a change of placement is appropriate, that placement shall be treated as an agreement between the state or local agency and the parent or guardian.

(e) Any party to the hearing held pursuant to this section shall be afforded the following rights consistent with state and federal statutes and regulations:

(1) The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of individuals with exceptional needs.

(2) The right to present evidence, written arguments, and oral arguments.

(3) The right to confront, cross-examine, and compel the attendance of witnesses.

(4) The right to a written, or, at the option of the parents or guardians, electronic verbatim record of the hearing.

(5) The right to written, or, at the option of the parent or guardian, electronic findings of fact and decisions. The record of the hearing and the findings of fact and decisions shall be provided at no cost to parents or guardians in accordance with paragraph (2) of subsection (c) of Section 300.509 of Title 34 of the Code of Federal Regulations. The findings and decisions shall be made available to the public after any personally identifiable information has been deleted consistent with the confidentiality requirements of subsection (c) of Section 1417 of Title 20 of the United States Code and shall also be transmitted to the Advisory Commission on Special Education pursuant to paragraph (4) of

1 subsection (h) of Section 1415 of Title 20 of the United States
2 Code.

3 (6) The right to be informed by the other parties to the hearing,
4 at least 10 days prior to the hearing, as to what those parties believe
5 are the issues to be decided at the hearing and their proposed
6 resolution of those issues. Upon the request of a parent who is not
7 represented by an attorney, the agency responsible for conducting
8 hearings shall provide a mediator to assist the parent in identifying
9 the issues and the proposed resolution of the issues.

10 (7) The right to receive from other parties to the hearing, at least
11 five business days prior to the hearing, a copy of all documents and
12 a list of all witnesses and their general area of testimony that the
13 parties intend to present at the hearing. Included in the material to
14 be disclosed to all parties at least five business days prior to a
15 hearing shall be all assessments completed by that date and
16 recommendations based on the assessments that the parties intend
17 to use at the hearing.

18 (8) The right, pursuant to paragraph (3) of subsection (a) of
19 Section 300.509 of Title 34 of the Code of Federal Regulations, to
20 prohibit the introduction of any evidence at the hearing that has not
21 been disclosed to that party at least five business days before the
22 hearing.

23 (f) The hearing conducted pursuant to this section shall be
24 completed and a written, reasoned decision mailed to all parties to
25 the hearing within 45 days from the receipt by the superintendent
26 of the request for a hearing. Either party to the hearing may request
27 the hearing officer to grant an extension. The extension shall be
28 granted upon a showing of good cause. Any extension shall extend
29 the time for rendering a final administrative decision for a period
30 only equal to the length of the extension.

31 (g) The hearing conducted pursuant to this section shall be the
32 final administrative determination and binding on all parties.

33 (h) In decisions relating to the placement of individuals with
34 exceptional needs, the person conducting the state hearing shall
35 consider cost, in addition to all other factors that are considered.

36 (i) Nothing in this chapter shall preclude a party aggrieved by
37 the findings and decisions in a hearing under this section from
38 exercising the right to appeal the decision to a state court of
39 competent jurisdiction. An aggrieved party may also exercise the
40 right to bring a civil action in a district court of the United States

1 without regard to the amount in controversy, pursuant to Section
2 300.512 of the Code of Federal Regulations. An appeal shall be
3 made within 90 days of receipt of the hearing decision. During the
4 pendency of any administrative or judicial proceeding conducted
5 pursuant to Chapter 5 (commencing with Section 56500), unless
6 the public education agency and the parents of the child agree
7 otherwise, the child involved in the hearing shall remain in his or
8 her present educational placement. Any action brought under this
9 subdivision shall adhere to the provisions of subsection (b) of
10 Section 300.512 of Title 34 of the Code of Federal Regulations.

11 (j) Any request for a due process hearing arising under
12 subdivision (a) of Section 56501 shall be filed within three years
13 from the date the party initiating the request knew or had reason
14 to know of the facts underlying the basis for the request.

15 SEC. 3. Section 56505.1 of the Education Code is amended
16 to read:

17 56505.1. The hearing officer may do any of the following
18 during the hearing:

19 (a) Question a witness on the record prior to any of the parties
20 doing so.

21 (b) With the consent of both parties to the hearing, request that
22 conflicting experts discuss an issue or issues with each other while
23 on the record.

24 (c) Visit the proposed placement site or sites when the physical
25 attributes of the site or sites are at issue.

26 (d) Call a witness to testify at the hearing if all parties to the
27 hearing consent to the witness giving testimony or the hearing is
28 continued for at least five days after the witness is identified and
29 before the witness testifies.

30 (e) Order that an impartial assessment of the pupil be conducted
31 for purposes of the hearing and continue the hearing until the
32 assessment has been completed. The cost of any assessment
33 ordered under this subdivision shall be included in the contract
34 between the department and the organization or entity conducting
35 the hearing.

36 (f) Bar introduction of any documents or the testimony of any
37 witnesses not disclosed to the hearing officer at least five business
38 days prior to the hearing and bar introduction of any documents or
39 the testimony of any witnesses at the hearing without the consent
40 of the other party not disclosed to the parties at least five business

1 days prior to the hearing pursuant to paragraph (7) of subdivision
2 (e) of Section 56505.

3 (g) In decisions relating to the provision of related services by
4 other public agencies, the hearing officer may call as witnesses
5 independent medical specialists qualified to present evidence in
6 the area of the pupil's medical disability. The cost for any witness
7 called to testify under this subdivision shall be included in the
8 contract between the department and the organization or entity
9 conducting the hearing.

10 (h) Set a reasonable limit on the length of the hearing after
11 consideration of all of the following:

12 (1) The issues to be heard.

13 (2) The complexity of the facts to be proven.

14 (3) The ability of the parties and their representatives, if any, to
15 present their respective cases.

16 (4) The estimate of the parties as to the time needed to present
17 their respective cases.

18 SEC. 4. Section 56506 of the Education Code is amended to
19 read:

20 56506. In addition to the due process hearing rights
21 enumerated in subdivision (b) of Section 56501, the following due
22 process rights extend to the pupil and the parent:

23 (a) Written notice to the parent of his or her rights in language
24 easily understood by the general public and in the primary
25 language of the parent or other mode of communication used by
26 the parent, unless to do so is clearly not feasible. The written notice
27 of rights shall include, but not be limited to, those prescribed by
28 Section 56341.

29 (b) The right to initiate a referral of a child for special education
30 services pursuant to Section 56303.

31 (c) The right to obtain an independent educational assessment
32 pursuant to subdivision (b) or (c) of Section 56329.

33 (d) The right to participate in the development of the
34 individualized education program and to be informed of the
35 availability under state and federal law of free appropriate public
36 education and of all available alternative programs, both public
37 and nonpublic.

38 (e) Written parental consent pursuant to Section 56321 shall be
39 obtained before any assessment of the pupil is conducted unless the
40 public education agency prevails in a due process hearing relating



1 to the assessment. Informed parental consent need not be obtained
2 in the case of a reassessment of the pupil if the local educational
3 agency can demonstrate that it has taken reasonable measures to
4 obtain consent and the pupil's parent has failed to respond.

5 (f) Written parental consent pursuant to Section 56321 shall be
6 obtained before the pupil is placed in a special education program.

7 SEC. 5. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 this act implements a federal law or regulation and results only in
10 costs mandated by the federal government, within the meaning of
11 Section 17556 of the Government Code.

